

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Patent Application of:)	Mail Stop Appeal Brief – Patents
)	
Ralph S. HOEFELMEYER et al.)	Group Art Unit: 2146
)	
Application No.: 10/699,824)	Examiner: J. Avellino
)	
Filed: November 4, 2003)	
)	
For: SYSTEMS AND METHODS FOR)	
PROVIDING SELF-COMPILING,)	
PEER-TO-PEER ON-LINE GAMING)	

APPEAL BRIEF

U.S. Patent and Trademark Office
Customer Window, Mail Stop Appeal Brief – Patents
Randolph Building
401 Dulany Street
Alexandria, Virginia 22314

Sir:

This Appeal Brief is submitted in response to the final Office Action, dated July 30, 2008 and in support of the Notice of Appeal filed September 9, 2008.

I. **REAL PARTY IN INTEREST**

The real party in interest of the present application, solely for purposes of identifying and avoiding potential conflicts of interest by board members due to working in matters in which the member has a financial interest, is Verizon Communications Inc. and its subsidiary companies, which currently include Verizon Business Global, LLC (formerly MCI, LLC) and Celco Partnership (doing business as Verizon Wireless, and which includes as a minority partner affiliates of Vodafone Group Plc). Verizon Communications Inc. or one of its subsidiary

companies is an assignee of record of the present application.

II. RELATED APPEALS AND INTERFERENCES

Appellants are unaware of any related appeals, interferences or judicial proceedings.

III. STATUS OF CLAIMS

Claims 1, 3-16, and 18-31 have been finally rejected in the final Office Action, dated July 30, 2008. Claims 2 and 17 were previously canceled without prejudice or disclaimer. Claims 1, 3-16, and 18-31 are the subject of the present appeal and are reproduced in the Appendix to this brief.

IV. STATUS OF AMENDMENTS

In response to the final Office Action, dated July 30, 2008, Appellants filed a Request for Reconsideration, dated August 8, 2008. The Examiner issued an Advisory Action, dated August 21, 2008, indicating that the arguments presented in the Request for Reconsideration were not persuasive. In response to the Advisory Action, Appellants filed a Notice of Appeal on September 9, 2008.

V. SUMMARY OF THE CLAIMED SUBJECT MATTER

Each of the independent claims involved in this appeal is recited below, followed in parenthesis by examples of where support can be found in the specification and drawings for the claimed subject matter. In addition, each dependent claim argued separately below is also summarized in a similar manner.

Claim 1 is directed to a method for establishing a gaming session (e.g., p. 11, lines 13-15) between a first network device that includes an operating system and at least one second network device in a communications network (e.g., p. 4, lines 12-15; Fig. 1, items 110 and 120), the method comprising modifying the first network device for the gaming session, the modifying including loading a new operating system (e.g., p. 12, lines 11-13), booting the first network device up in the new operating system (e.g., p. 13, lines 1-2; p. 13, line 22 to p. 14, line 2), detecting a hardware configuration of the first network device (e.g., p. 13, lines 2-3; p. 14, lines 3-7; Fig. 5, Act 520), generating a configuration file based on the detecting (e.g., p. 13, lines 2-3; p. 14, lines 3-7; Fig. 5, Act 520), compiling network access software and peering software using the configuration file (e.g., p. 14, lines 7-9; Fig. 5, Act 530), and installing the network access software and the peering software using the configuration file (e.g., p. 14, lines 7-11; Fig. 5, Act 530), connecting the first network device to the communications network (e.g., p. 14, lines 10-16; Fig. 5, Act 540); and establishing a peer-to-peer gaming session with the at least one second network device (e.g., p. 16, lines 11-14; Fig. 5, Act 560).

Claim 7 recites connecting to the communications network using Virtual Private Network (VPN) security (e.g., p. 14, lines 14-16).

Independent claim 12 is directed to a device comprising a memory configured to store instructions (e.g., p. 9, line 22 to p. 10, line 3; Fig. 2, item 230); and a processor configured to execute the instructions (e.g., p. 9, line 21-22; Fig. 2, item 220) to receive a gaming package (e.g., p. 12, lines 6-11), the gaming package including an operating system (e.g., p. 12, lines 12-14), a script for detecting a hardware configuration of the device (e.g., p. 12, lines 12-14), software for accessing a network (e.g., p. 12, lines 12-14), and peering software (e.g., p. 12, lines 12-14), load the operating system in response to receiving the gaming package (e.g., p. 12, lines

11-13), detect a hardware configuration of the device using the script (e.g., p. 13, lines 2-3; p. 14, lines 3-7; Fig. 5, Act 520), compile the software for accessing the network and the peering software based on the detected hardware configuration of the device (e.g., p. 14, lines 7-9; Fig. 5, Act 530), install the software for accessing the network and the peering software based on the detected hardware configuration of the device (e.g., p. 14, lines 7-11; Fig. 5, Act 530), and establish a peer-to-peer gaming session with another device over the network using the software for accessing the network and the peering software (e.g., p. 16, lines 11-14; Fig. 5, Act 560).

Claim 16 recites that, when receiving the gaming package, the processor is configured to download the gaming package from the network (e.g., p. 12, lines 7-10).

Independent claim 24 is directed to a network comprising a server configured to provide a list of games (e.g., p. 15, lines 4-7); and a plurality of network devices, at least one network device of the plurality of network devices being configured to receive a gaming package (e.g., p. 12, lines 6-11) that includes an operating system (e.g., p. 12, lines 12-14), a script for detecting a hardware configuration of the device (e.g., p. 12, lines 12-14), software for accessing a network (e.g., p. 12, lines 12-14), and peering software (e.g., p. 12, lines 12-14), load the operating system in response to receiving the gaming package (e.g., p. 12, lines 11-13), detect a hardware configuration of the device using the script (e.g., p. 13, lines 2-3; p. 14, lines 3-7; Fig. 5, Act 520), compile the software for accessing the network and the peering software based on the detected hardware configuration of the device (e.g., p. 14, lines 7-9; Fig. 5, Act 530), install the software for accessing the network and the peering software based on the detected hardware configuration of the device (e.g., p. 14, lines 7-11; Fig. 5, Act 530), obtain the list of games from the server using the software for accessing the network (e.g., p. 15, lines 10-12), select one game in the list of games (e.g., p. 15, lines 16-17), and establish, using the peering software, a peer-to-

peer gaming session with at least one other network device of the plurality of network devices in response to selecting the one game (e.g., p. 16, lines 11-14; Fig. 5, Act 560).

Claim 27 recites a device to provide at least one advertisement to a first network device of the plurality of network devices based on the stored information (e.g., p. 17, lines 13-14).

Claim 28 recites a device to provide at least one fee-based service to a first network device of the plurality of network devices based on the stored information (e.g., p. 15, lines 13-15).

Independent claim 31 is directed to a network device comprising means for receiving a gaming package (e.g., p. 7, lines 3-6; Fig. 2, item 260), the gaming package including an operating system (e.g., p. 12, lines 12-14), a script for detecting a hardware configuration of the network device (e.g., p. 12, lines 12-14), software for accessing a network (e.g., p. 12, lines 12-14), peering software (e.g., p. 12, lines 12-14), and gaming software (e.g., p. 12, lines 12-14); means for installing the operating system based on receiving the gaming package (e.g., p. 6, lines 15-20; Fig. 2, items 220 and 230); means for detecting a hardware configuration of the network device using the script (e.g., p. 6, lines 15-20; Fig. 2, items 220 and 230); means for compiling the software for accessing the network, the peering software, and the gaming software based on the detected hardware configuration of the network device (e.g., p. 6, lines 15-20; Fig. 2, items 220 and 230); means for installing the software for accessing the network, the peering software, and the gaming software based on the detected hardware configuration of the network device (e.g., p. 6, lines 15-20; Fig. 2, items 220 and 230); and means for establishing a peer-to-peer gaming session with at least one other network device using the software for accessing the network, the peering software, and the gaming software (e.g., p. 7, lines 3-6; Fig. 2, item 260).

VI. GROUND OF REJECTION TO BE REVIEWED ON APPEAL

A. Claims 1, 3-16, and 18-31 have been rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent Application Publication No. 2004/00002384 to Multerer et al. (hereinafter “MULTERER”) in view of U.S. Patent Application Publication No. 2002/0013882 to Ko et al. (hereinafter “KO”), and further in view of U.S. Patent No. 6,981,251 to Kreller et al. (hereinafter “KRELLER”).

VII. ARGUMENT

A. **The rejection under 35 U.S.C. § 103(a) based on MULTERER in view of KO and further in view of KRELLER should be reversed.**

The initial burden of establishing a *prima facie* basis to deny patentability to a claimed invention always rests upon the Examiner. In re Oetiker, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992).

In rejecting a claim under 35 U.S.C. § 103, the Examiner must provide a factual basis to support the conclusion of obviousness. In re Warner, 379 F.2d 1011, 154 USPQ 173 (CCPA 1967). Based upon the objective evidence of record, the Examiner is required to make the factual inquiries mandated by Graham v. John Deere Co., 86 S.Ct. 684, 383 U.S. 1, 148 USPQ 459 (1966). KSR International Co. v. Teleflex Inc., 550 U.S. _____, 127 S. Ct. 1727 (2007). The Examiner is also required to explain how and why one having ordinary skill in the art would have been realistically motivated to modify an applied reference and/or combine applied references to arrive at the claimed invention. Uniroyal, Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 5 USPQ2d 1434 (Fed. Cir. 1988).

1. Claims 1, 3-6 and 8-11.

Independent claim 1 is directed to a method for establishing a gaming session between a first network device that includes an operating system and at least one second network device in a communications network, that includes modifying the first network device for the gaming session, the modifying including loading a new operating system, booting the first network device up in the new operating system, detecting a hardware configuration of the first network device, generating a configuration file based on the detecting, compiling network access software and peering software using the configuration file, and installing the network access software and the peering software using the configuration file, connecting the first network device to the communications network; and establishing a peer-to-peer gaming session with the at least one second network device. MULTERER, KO, and KRELLER, whether taken alone or in any reasonable combination, do not disclose or suggest this combination of features.

For example, MULTERER, KO, and KRELLER do not disclose or suggest installing network access software and peering software using a configuration file, as recited in claim 1. The Examiner admits that MULTERER does not disclose this feature (final Office Action, p. 3). The Examiner relies on paragraphs [0036-0038], [0040], and [0044] of KO for allegedly disclosing installing network access software using a configuration file (final Office Action, p. 3). Appellants disagree with the Examiner's interpretation of KO.

Paragraphs [0036-0038] of KO disclose, after turning on a computer, checking the system configuration, checking installation states and problems of various peripheral devices connected to the computer and generating a hardware list containing these devices. If there is a problem during this process, an error is indicated to the user. Next, a boot program loading operation is executed. The boot program is stored inside a boot program storage device and is loaded into the

RAM. The boot program contains a priority table, an optical disc player driver, and a loader program. The user selects an operating system, and if only one operating system is available, that operation system is automatically selected.

This section of KO does not disclose or suggest installing network access software and peering software using a configuration file, which is generated based on detecting a hardware configuration of the first network device, as recited in claim 1. Rather, this section of KO only discloses loading a boot program and letting a user select an operating system.

Paragraph [0040] of KO discloses that after an operating system is loaded, a necessary user configuration is set up using user configuration setting information recorded in the data region disc. After obtaining configuration variables, such as application programs used by the user and data files generated by the application programs, necessary application programs are executed. The user can obtain the same operating system and user configuration as that of a computer, and the user configuration, which contains information on the application programs used by the user and the data used by the application programs, may be updated in response to the changes.

This section of KO does not disclose or suggest installing network access software and peering software using a configuration file, as recited in claim 1. Rather, this section of KO only discloses setting user configurations for application programs.

Paragraph [0044] of KO discloses the case of applying the optical disc of KO to a game system. The linker loads an appropriate operating system and game programs to the game engine so that various game systems can operate with only one optical disc.

This section of KO does not disclose or suggest installing network access software and peering software using a configuration file, as recited in claim 1. Rather, this section of KO only

discloses using the same optical disc having an operation system with multiple game systems.

The Examiner also alleges that KO discloses installing drivers for each device on the user's computer, and that since MULTERER discloses a network access device, one of ordinary skill would naturally understand that a network driver would be installed as well (final Office Action, p. 3). The Examiner appears to be referring to paragraph [0039] of KO, which discloses that if a user selects an operating system recorded on an optical disc, the operating system is read from the optical disc and loaded into the RAM. The hardware list generated previously is used to install a driver file for each device on the list. This section of KO does not disclose or suggest installing network access software and peering software using a configuration file, as recited in claim 1. Even if it is assumed, for the sake of argument, that the hardware list contains a network access device, a point Appellants do not concede, installing a network driver for a network access device cannot be reasonably held to correspond to installing network access software. For example, a device driver is generally hardware specific, while network access software operates as an application.

Furthermore, none of the sections of KO relied on by the Examiner, or any other sections of KO, disclose or even remotely suggest peering software. Therefore, KO does not disclose or suggest installing network access software and peering software using a configuration file, as recited in claim 1. In fact, the Examiner admits that MULTERER and KO do not disclose or suggest installing peering software using a configuration file (final Office Action, p. 3).

The Examiner alleges that KRELLER discloses "another software installation system in which, in response to receiving a hardware list of components installed, an executable application is compiled and installed on the client device" (final Office Action, p. 3). Appellants submit that this allegation does not address the feature of installing peering software. KRELLER

does not disclose or even remotely suggest peering software. In fact, the words “peer” or “peering” do not appear anywhere in KRELLER.

Moreover, MULTERER, KO, and KRELLER do not disclose or suggest compiling network access software and peering software using a configuration file, as also recited in claim 1. The Examiner admits that MULTERER and KO do not disclose or suggest compiling network access software and peering software using a configuration file, and, as stated above, relies on col. 3, lines 20-31 of KRELLER for allegedly disclosing “another software installation system in which, in response to receiving a hardware list of components installed, an executable application is compiled and installed on the client device” (final Office Action, p. 3). Appellants submit that this section of KRELLER does not disclose or suggest the above feature of claim 1.

Col. 3, lines 20-31 of KRELLER disclose:

The agent system is distinguished in that the agent system launcher is designed such that, before an agent system is loaded from a host computer onto the client computer on which at least the agent system launcher is installed, an identifier describing the hardware and/or software of the client computer is sent to the host computer, and a server system, the agent system update program, installed on the host computer is designed such that it takes the identifier describing the hardware and/or the software of the client computer as a basis for compiling an agent system adjusted to the hardware and/or software of the client computer and loads this agent system onto the client computer.

This section of KRELLER discloses an agent system that is installed on a host computer by using the hardware and/or software of the client computer, on which the agent system is to be installed, as a basis for compiling the agent system and loading the agent system onto the client computer. The agent system, or mobile agent, is an autonomous cooperative software unit, which requires no interaction with the user, and is fundamentally different from a conventional program (see KRELLER, col. 1, lines 23-26 and lines 38-42). This section of KRELLER does not disclose or suggest compiling network access software and peering software using a configuration file, as recited in claim 1. Instead, KRELLER discloses compiling mobile agents, which are unrelated to network access software or to peering software.

Therefore, even if KO and KRELLER were to be combined with MULTERER, the combination would not disclose or suggest the above feature of claim 1. Further, even if for the sake of argument, the combination of MULTERER, KO, and KRELLER could be fairly construed to disclose or suggest each of the features of claim 1, Appellants assert that the reasons for combining MULTERER, KO, and KRELLER do not satisfy the requirements of 35 U.S.C. § 103.

For example, with respect to the reasons for combining MULTERER and KO, the Examiner alleges (final Office Action, p. 3):

It would have been obvious to one of ordinary skill in the art to combine the teaching of Ko with Multerer thereby utilizing the optical disk of Ko to load an operating system, such as the one of Multerer 526 and then install game software (Ko; paragraph 44), which can be the gaming software described in Multerer (e.g. abstract), thereby allowing those users of Multerer in order to utilize the gaming software regardless of the type of operating system software or the type of hardware in the device supported by Ko (paragraphs 11-12).

Appellants submit that the Examiner's allegation is merely a conclusory statement about an alleged benefit of the combination. Such conclusory statements have been repeatedly held to be insufficient for establishing a *prima facie* case of obviousness. In this respect, Appellants rely upon KSR International Co. v. Teleflex Inc., 550 U.S. ____ (April 30, 2007) (citing In re Kahn, 441 F.3d 977, 988 (Fed. Cir. 2006)), where it was held that rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.

With respect to the reasons for combining MULTERER and KO with KRELLER, the Examiner alleges (final Office Action, p. 4):

It would have been obvious to one of ordinary skill in the art to combine the teaching of Keller with Multerer-Ko, in order to compile and install the peering software of Multerer utilizing the hardware list of Ko, after the operating system of Ko has been installed, thereby avoiding incompatibilities of software applications and installed hardware.

Appellants submit that the Examiner's allegation is again merely a conclusory statement about

an alleged benefit of the combination. Furthermore, if KO is to be combined with MULTERER to avoid operating system and hardware incompatibilities as the Examiner alleges above, it is unclear what the addition of KRELLER is supposed to accomplish. In addition, KRELLER is directed to installing mobile agents, which is unrelated to peer-to-peer applications. As stated above, KRELLER does not even mention peering. The Examiner has not provided a clear explanation of how KRELLER can be combined with an alleged MULTERER and KO combination, or given sufficient reasons for undertaking such a combination. Therefore, a *prima facie* case of obviousness with respect to claim 1 has not been established.

In the Advisory Action, dated August 21, 2008, the Examiner alleges that MULTERER discloses establishing a peering session and that this inherently requires the use and installation of peering software. However, the Examiner admits that MULTERER (and KO) do not disclose or suggest installing peering software using a configuration file (final Office Action, p. 3). Thus, the Examiner's allegation in the Advisory Action contradicts the Examiner's admission in the final Office Action.

For at least the foregoing reasons, Appellants submit that claim 1 is patentable over MULTERER, KO, and KRELLER, whether taken alone or in any reasonable combination. Accordingly, Appellants respectfully request that the rejection of claim 1 under 35 U.S.C. § 103(a) based on MULTERER, KO, and KRELLER be reversed.

Claims 3-6 and 8-11 depend from claim 1. Therefore, these claims are patentable over MULTERER, KO, and KRELLER, whether taken alone or in any reasonable combination, for at least the reasons set forth above with respect to claim 1. Accordingly, Appellants respectfully request that the rejection of claims 3-6 and 8-11 under 35 U.S.C. § 103(a) based on MULTERER, KO, and KRELLER be reversed.

In response to Appellants' challenge regarding the Examiner's use of OFFICIAL NOTICE with respect to claim 6, the Examiner relies on U.S. Patent No. 7,159,008 to Wies et al. (hereinafter "WIES") (final Office Action, dated July 30, 2008, p. 10). Therefore, claim 6 will be addressed as if also rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over MULTERER, KO, KRELLER, and WIES.

Claim 6 depends from claim 1. Without acquiescing in the Examiner's rejection, Appellants submit that WIES does not overcome the deficiencies of MULTERER, KO, and KRELLER set forth above with respect to claim 1. Therefore, claim 6 is patentable over MULTERER, KO, KRELLER, and WIES, whether taken alone or in any reasonable combination, for at least the reasons set forth above with respect to claim 1. Accordingly, Appellants respectfully request that the rejection of claim 6 under 35 U.S.C. § 103(a) based on MULTERER, KO, KRELLER, and WIES be reversed.

2. Claim 7.

Claim 7 depends from claim 1. Therefore, this claim is patentable over MULTERER, KO, and KRELLER, whether taken alone or in any reasonable combination, for at least the reasons set forth above with respect to claim 1. Accordingly, Appellants respectfully request that the rejection of claim 7 under 35 U.S.C. § 103(a) based on MULTERER, KO, and KRELLER be reversed.

Moreover, this claim is patentable over MULTERER, KO, and KRELLER for reasons of their own.

Claim 7 recites connecting to a communications network using Virtual Private Network (VPN) security. The Examiner alleges that this feature is well known in the art and relies on OFFICIAL NOTICE (final Office Action, pp. 5-6). Appellants respectfully disagree with the

Examiner's allegation.

Appellants are not aware of any references that disclosed, at the time of the invention, connecting a first network device, which is modified for a gaming session in the manner recited in claim 1, to a communications network using Virtual Private Network (VPN) security. In the Request for Reconsideration, filed August 8, 2008, Appellants have requested that the Examiner provide a reference disclosing this feature. The Examiner alleges that Appellants have failed to seasonably challenge the Examiner's assertions of well known subject matter and thus allegedly the claim features the Examiner considers well known are now established as admitted prior art (final Office Action, p. 11). Appellants respectfully traverse the Examiner's assertion. M.P.E.P. § 2144.03 does not specify a time limit within which Appellants must seasonably challenge the Examiner's OFFICIAL NOTICE. Furthermore, as stated in the footnote on p. 12 of the Amendment, dated April 17, 2008, Appellants' silence as to the Examiner's assertion as to dependent claims is not a concession that such assertions are accurate.

Since the Examiner has not provided a reference disclosing the feature recited in claim 7, a *prima facie* case of obviousness with respect to claim 7 has not been established.

For at least this additional reason, Appellants submit that claim 7 is patentable over MULTERER, KO, and KRELLER. Accordingly, Appellants respectfully request that the rejection of claim 7 under 35 U.S.C. § 103(a) based on MULTERER, KO, and KRELLER be reversed.

3. Claims 12-15 and 18-23.

Independent claim 12 is directed to a device that includes a memory configured to store instructions; and a processor configured to execute the instructions to receive a gaming package, the gaming package including an operating system, a script for detecting a hardware

configuration of the device, software for accessing a network, and peering software, load the operating system in response to receiving the gaming package, detect a hardware configuration of the device using the script, compile the software for accessing the network and the peering software based on the detected hardware configuration of the device, install the software for accessing the network and the peering software based on the detected hardware configuration of the device, and establish a peer-to-peer gaming session with another device over the network using the software for accessing the network and the peering software. MULTERER, KO, and KRELLER, whether taken alone or in any reasonable combination, do not disclose or suggest this combination of features.

For example, MULTERER, KO, and KRELLER do not disclose or suggest a processor configured to execute instructions to install software for accessing a network and peering software based on detected hardware configuration of a device, as recited in claim 12. The Examiner states that claim 12 is rejected for the same reasons as claim 1 (final Office Action, p. 7). In rejecting claim 1, the Examiner admits that MULTERER does not disclose “modifying the first network device for the gaming session, the modifying including loading a new operating system” (final Office Action, p. 3). The Examiner relies on paragraphs [0036-0038], [0040], and [0044] of KO for allegedly disclosing installing network access software using a configuration file (final Office Action, p. 3). Appellants disagree with the Examiner’s interpretation of KO.

Paragraphs [0036-0038] of KO disclose, after turning on a computer, checking the system configuration, checking installation states and problems of various peripheral devices connected to the computer and generating a hardware list containing these devices. If there is a problem during this process, an error is indicated to the user. Next, a boot program loading operation is executed. The boot program is stored inside a boot program storage device and is loaded into the

RAM. The boot program contains a priority table, an optical disc player driver, and a loader program. The user selects an operating system, and if only one operating system is available, that operation system is automatically selected.

This section of KO does not disclose or suggest a processor configured to execute instructions to install software for accessing a network and peering software based on detected hardware configuration of a device, as recited in claim 12. Rather, this section of KO only discloses loading a boot program and letting a user select an operating system.

Paragraph [0040] of KO discloses that after an operating system is loaded, a necessary user configuration is set up using user configuration setting information recorded in the data region disc. After obtaining configuration variables, such as application programs used by the user and data files generated by the application programs, necessary application programs are executed. The user can obtain the same operating system and user configuration as that of a computer, and the user configuration, which contains information on the application programs used by the user and the data used by the application programs, may be updated in response to the changes.

This section of KO does not disclose or suggest a processor configured to execute instructions to install software for accessing a network and peering software based on detected hardware configuration of a device, as recited in claim 12. Rather, this section of KO only discloses setting user configurations for application programs.

Paragraph [0044] of KO discloses the case of applying the optical disc of KO to a game system. The linker loads an appropriate operating system and game programs to the game engine so that various game systems can operate with only one optical disc.

This section of KO does not disclose or suggest a processor configured to execute

instructions to install software for accessing a network and peering software based on detected hardware configuration of a device, as recited in claim 12. Rather, this section of KO only discloses using the same optical disc having an operation system to multiple game systems.

The Examiner also alleges that KO discloses installing drivers for each device on the user's computer, and that since MULTERER discloses a network access device, one of ordinary skill would naturally understand that a network driver would be installed as well (final Office Action, p. 3). The Examiner appears to be referring to paragraph [0039] of KO, which discloses that if a user selects an operating system recorded on an optical disc, the operating system is read from the optical disc and loaded into the RAM. The hardware list generated previously is used to install a driver file for each device on the list. This section of KO does not disclose or suggest a processor configured to execute instructions to install software for accessing a network and peering software based on detected hardware configuration of a device, as recited in claim 12. Even if it is assumed, for the sake of argument, that the hardware list disclosed by KO contains a network access device, a point Appellants do not concede, installing a network driver for a network access device cannot be reasonably held to correspond to installing software for accessing a network. For example, a device driver is generally hardware specific, while software for accessing a network operates as an application.

Furthermore, none of the sections of KO relied on by the Examiner, or any other sections of KO, disclose or even remotely suggest peering software. Therefore, KO does not disclose or suggest a processor configured to execute instructions to install software for accessing a network and peering software based on detected hardware configuration of a device, as recited in claim 12. In fact, the Examiner admits that MULTERER and KO do not disclose or suggest installing peering software using a configuration file (final Office Action, p. 3).

The Examiner alleges that KRELLER discloses “another software installation system in which, in response to receiving a hardware list of components installed, an executable application is compiled and installed on the client device” (final Office Action, p. 3). Appellants submit that this allegation does not address the feature of installing peering software. KRELLER does not disclose or even remotely suggest peering software. In fact, the words “peer” or “peering” do not appear anywhere in KRELLER.

Moreover, MULTERER, KO, and KRELLER do not disclose or suggest a processor configured to execute instructions to compile software for accessing a network and peering software based on detected hardware configuration of a device, as recited in claim 12. The Examiner admits that MULTERER and KO do not disclose or suggest compiling network access software and peering software using a configuration file, and, as stated above, relies on col. 3, lines 20-31 of KRELLER for allegedly disclosing “another software installation system in which, in response to receiving a hardware list of components installed, an executable application is compiled and installed on the client device” (final Office Action, p. 3). Appellants submit that this section of KRELLER does not disclose or suggest the above feature of claim 12.

Col. 3, lines 20-31 of KRELLER disclose:

The agent system is distinguished in that the agent system launcher is designed such that, before an agent system is loaded from a host computer onto the client computer on which at least the agent system launcher is installed, an identifier describing the hardware and/or software of the client computer is sent to the host computer, and a server system, the agent system update program, installed on the host computer is designed such that it takes the identifier describing the hardware and/or the software of the client computer as a basis for compiling an agent system adjusted to the hardware and/or software of the client computer and loads this agent system onto the client computer.

This section of KRELLER discloses an agent system that is installed on a host computer by using the hardware and/or software of the client computer, on which the agent system is to be installed, as a basis for compiling the agent system and loading the agent system onto the client computer. The agent system, or mobile agent, is an autonomous cooperative software unit,

which requires no interaction with the user, and is fundamentally different from a conventional program (see KRELLER, col. 1, lines 23-26 and lines 38-42). This section of KRELLER does not disclose or suggest a processor configured to execute instructions to compile software for accessing a network and peering software based on detected hardware configuration of a device, as recited in claim 12. Instead, KRELLER discloses compiling mobile agents, which are unrelated to network access software or to peering software.

Therefore, even if KO and KRELLER were to be combined with MULTERER, the combination would not disclose or suggest the above feature of claim 12. Further, even if for the sake of argument, the combination of MULTERER, KO, and KRELLER could be fairly construed to disclose or suggest each of the features of claim 12, Appellants assert that the reasons for combining MULTERER, KO, and KRELLER do not satisfy the requirements of 35 U.S.C. § 103.

For example, with respect to the reasons for combining MULTERER and KO, the Examiner alleges (final Office Action, p. 3):

It would have been obvious to one of ordinary skill in the art to combine the teaching of Ko with Multerer thereby utilizing the optical disk of Ko to load an operating system, such as the one of Multerer 526 and then install game software (Ko; paragraph 44), which can be the gaming software described in Multerer (e.g. abstract), thereby allowing those users of Multerer in order to utilize the gaming software regardless of the type of operating system software or the type of hardware in the device supported by Ko (paragraphs 11-12).

Appellants submit that the Examiner's allegation is merely a conclusory statement about an alleged benefit of the combination. Such conclusory statements have been repeatedly held to be insufficient for establishing a *prima facie* case of obviousness. In this respect, Appellants rely upon KSR International Co. v. Teleflex Inc., 550 U.S. ____ (April 30, 2007) (citing In re Kahn, 441 F.3d 977, 988 (Fed. Cir. 2006)), where it was held that rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated

reasoning with some rational underpinning to support the legal conclusion of obviousness.

With respect to the reasons for combining MULTERER and KO with KRELLER, the Examiner alleges (final Office Action, p. 4):

It would have been obvious to one of ordinary skill in the art to combine the teaching of Keller with Multerer-Ko, in order to compile and install the peering software of Multerer utilizing the hardware list of Ko, after the operating system of Ko has been installed, thereby avoiding incompatibilities of software applications and installed hardware.

Appellants submit that the Examiner's allegation is again merely a conclusory statement about an alleged benefit of the combination. Furthermore, if KO is to be combined with MULTERER to avoid operating system and hardware incompatibilities as the Examiner alleges above, it is unclear what the addition of KRELLER is supposed to accomplish. In addition, KRELLER is directed to installing mobile agents, which is unrelated to peer-to-peer applications. As stated above, KRELLER does not even mention peering. The Examiner has not provided a clear explanation of how KRELLER can be combined with an alleged MULTERER and KO combination, or given sufficient reasons for undertaking such a combination. Therefore, a *prima facie* case of obviousness with respect to claim 12 has not been established.

In the Advisory Action, dated August 21, 2008, the Examiner alleges that MULTERER discloses establishing a peering session and that this inherently requires the use and installation of peering software. However, the Examiner admits that MULTERER (and KO) do not disclose or suggest installing peering software using a configuration file (final Office Action, p. 3). Thus, the Examiner's allegation in the Advisory Action contradicts the Examiner's admission in the final Office Action.

For at least the foregoing reasons, Appellants submit that claim 12 is patentable over MULTERER, KO, and KRELLER, whether taken alone or in any reasonable combination. Accordingly, Appellants respectfully request that the rejection of claim 12 under 35 U.S.C. §

103(a) based on MULTERER, KO, and KRELLER be reversed.

Claims 13-15 and 18-23 depend from claim 12. Therefore, these claims are patentable over MULTERER, KO, and KRELLER, whether taken alone or in any reasonable combination, for at least the reasons set forth above with respect to claim 12. Accordingly, Appellants respectfully request that the rejection of claims 13-15 and 18-23 under 35 U.S.C. § 103(a) based on MULTERER, KO, and KRELLER be reversed.

4. Claim 16.

Claim 16 depends from claim 12. Therefore, this claim is patentable over MULTERER, KO, and KRELLER, whether taken alone or in any reasonable combination, for at least the reasons set forth above with respect to claim 12. Accordingly, Appellants respectfully request that the rejection of claim 16 under 35 U.S.C. § 103(a) based on MULTERER, KO, and KRELLER be reconsidered and withdrawn.

Moreover, this claim is patentable over MULTERER, KO, and KRELLER for reasons of their own.

For example, claim 16 recites downloading a gaming package, which includes an operating system, a script for detecting a hardware configuration of the device, software for accessing a network, and peering software, from the network. The Examiner alleges that this feature is well known in the art and relies on OFFICIAL NOTICE (final Office Action, p. 8). Appellants respectfully disagree with the Examiner's allegation.

Appellants are not aware of any references that disclosed, at the time of the invention, downloading a gaming package, which includes an operating system, a script for detecting a hardware configuration of the device, software for accessing a network, and peering software, from the network. In the Request for Reconsideration, filed August 8, 2008, Appellants have

requested that the Examiner provide a reference disclosing this feature. The Examiner alleges that Appellants have failed to seasonably challenge the Examiner's assertions of well known subject matter and thus allegedly the claim features the Examiner considers well known are now established as admitted prior art (final Office Action, p. 11). Appellants respectfully traverse the Examiner's assertion. M.P.E.P. § 2144.03 does not specify a time limit within which Appellants must seasonably challenge the Examiner's OFFICIAL NOTICE. Furthermore, as stated in the footnote on p. 12 of the Amendment, dated April 17, 2008, Appellants' silence as to the Examiner's assertion as to dependent claims is not a concession that such assertions are accurate.

Since the Examiner has not provided a reference disclosing the feature recited in claim 16, a *prima facie* case of obviousness with respect to claim 16 has not been established.

For at least this additional reason, Appellants submit that claim 16 is patentable over MULTERER, KO, and KRELLER. Accordingly, Appellants respectfully request that the rejection of claim 16 under 35 U.S.C. § 103(a) based on MULTERER, KO, and KRELLER be reversed.

5. Claims 24-26 and 29-30.

Independent claim 24 is directed to a network that includes a server configured to provide a list of games; and a plurality of network devices, at least one network device of the plurality of network devices being configured to receive a gaming package that includes an operating system, a script for detecting a hardware configuration of the device, software for accessing a network, and peering software, load the operating system in response to receiving the gaming package, detect a hardware configuration of the device using the script, compile the software for accessing the network and the peering software based on the detected hardware configuration of the device, install the software for accessing the network and the peering software based on the

detected hardware configuration of the device, obtain the list of games from the server using the software for accessing the network, select one game in the list of games, and establish, using the peering software, a peer-to-peer gaming session with at least one other network device of the plurality of network devices in response to selecting the one game. MULTERER, KO, and KRELLER, whether taken alone or in any reasonable combination, do not disclose or suggest this combination of features.

For example, MULTERER, KO, and KRELLER do not disclose or suggest a plurality of network devices, at least one network device of the plurality of network devices being configured to install software for accessing a network and peering software based on detected hardware configuration of the network device, as recited in claim 24. The Examiner states that claim 24 is rejected for similar reasons as stated above (final Office Action, p. 9). In rejecting claim 1, the Examiner admits that MULTERER does not disclose “modifying the first network device for the gaming session, the modifying including loading a new operating system” (final Office Action, p. 3). The Examiner relies on paragraphs [0036-0038], [0040], and [0044] of KO for allegedly disclosing installing network access software using a configuration file (final Office Action, p. 3). Appellants disagree with the Examiner’s interpretation of KO.

Paragraphs [0036-0038] of KO disclose, after turning on a computer, checking the system configuration, checking installation states and problems of various peripheral devices connected to the computer and generating a hardware list containing these devices. If there is a problem during this process, an error is indicated to the user. Next, a boot program loading operation is executed. The boot program is stored inside a boot program storage device and is loaded into the RAM. The boot program contains a priority table, an optical disc player driver, and a loader program. The user selects an operating system, and if only one operating system is available,

that operation system is automatically selected.

This section of KO does not disclose or suggest a plurality of network devices, at least one network device of the plurality of network devices being configured to install software for accessing a network and peering software based on detected hardware configuration of the network device, as recited in claim 24. Rather, this section of KO only discloses loading a boot program and letting a user select an operating system.

Paragraph [0040] of KO discloses that after an operating system is loaded, a necessary user configuration is set up using user configuration setting information recorded in the data region disc. After obtaining configuration variables, such as application programs used by the user and data files generated by the application programs, necessary application programs are executed. The user can obtain the same operating system and user configuration as that of a computer, and the user configuration, which contains information on the application programs used by the user and the data used by the application programs, may be updated in response to the changes.

This section of KO does not disclose or suggest a plurality of network devices, at least one network device of the plurality of network devices being configured to install software for accessing a network and peering software based on detected hardware configuration of the network device, as recited in claim 24. Rather, this section of KO only discloses setting user configurations for application programs.

Paragraph [0044] of KO discloses the case of applying the optical disc of KO to a game system. The linker loads an appropriate operating system and game programs to the game engine so that various game systems can operate with only one optical disc.

This section of KO does not disclose or suggest a plurality of network devices, at least

one network device of the plurality of network devices being configured to install software for accessing a network and peering software based on detected hardware configuration of the network device, as recited in claim 24. Rather, this section of KO only discloses using the same optical disc having an operation system to multiple game systems.

The Examiner also alleges that KO discloses installing drivers for each device on the user's computer, and that since MULTERER discloses a network access device, one of ordinary skill would naturally understand that a network driver would be installed as well (final Office Action, p. 3). The Examiner appears to be referring to paragraph [0039] of KO, which discloses that if a user selects an operating system recorded on an optical disc, the operating system is read from the optical disc and loaded into the RAM. The hardware list generated previously is used to install a driver file for each device on the list. This section of KO does not disclose or suggest a plurality of network devices, at least one network device of the plurality of network devices being configured to install software for accessing a network and peering software based on detected hardware configuration of the network device, as recited in claim 24. Even if it is assumed, for the sake of argument, that the hardware list contains a network access device, a point Appellants do not concede, installing a network driver for a network access device cannot be reasonably held to correspond to installing software for accessing a network. For example, a device driver is generally hardware specific, while network access software operates as an application.

Furthermore, none of the sections of KO relied on by the Examiner, or any other sections of KO, disclose or even remotely suggest peering software. Therefore, KO does not disclose or suggest a plurality of network devices, at least one network device of the plurality of network devices being configured to install software for accessing a network and peering software based

on detected hardware configuration of the network device, as recited in claim 24. In fact, the Examiner admits that MULTERER and KO do not disclose or suggest installing peering software using a configuration file (final Office Action, p. 3).

The Examiner alleges that KRELLER discloses “another software installation system in which, in response to receiving a hardware list of components installed, an executable application is compiled and installed on the client device” (final Office Action, p. 3). Appellants submit that this allegation does not address the feature of installing peering software. KRELLER does not disclose or even remotely suggest peering software. In fact, the words “peer” or “peering” do not appear anywhere in KRELLER.

Moreover, MULTERER, KO, and KRELLER do not disclose or suggest a plurality of network devices, at least one network device of the plurality of network devices being configured to compile software for accessing a network and peering software based on detected hardware configuration of the network device, as recited in claim 24. In rejecting claim 1, the Examiner admits that MULTERER and KO do not disclose or suggest compiling network access software and peering software using a configuration file, and, as stated above, relies on col. 3, lines 20-31 of KRELLER for allegedly disclosing “another software installation system in which, in response to receiving a hardware list of components installed, an executable application is compiled and installed on the client device” (final Office Action, p. 3). Appellants submit that this section of KRELLER does not disclose or suggest the above feature of claim 24.

Col. 3, lines 20-31 of KRELLER disclose:

The agent system is distinguished in that the agent system launcher is designed such that, before an agent system is loaded from a host computer onto the client computer on which at least the agent system launcher is installed, an identifier describing the hardware and/or software of the client computer is sent to the host computer, and a server system, the agent system update program, installed on the host computer is designed such that it takes the identifier describing the hardware and/or the software of the client computer as a basis for compiling an agent system adjusted to the hardware and/or software of the client computer and loads

this agent system onto the client computer.

This section of KRELLER discloses an agent system that is installed on a host computer by using the hardware and/or software of the client computer, on which the agent system is to be installed, as a basis for compiling the agent system and loading the agent system onto the client computer. The agent system, or mobile agent, is an autonomous cooperative software unit, which requires no interaction with the user, and is fundamentally different from a conventional program (see KRELLER, col. 1, lines 23-26 and lines 38-42). This section of KRELLER does not disclose or suggest a plurality of network devices, at least one network device of the plurality of network devices being configured to compile software for accessing a network and peering software based on detected hardware configuration of the network device, as recited in claim 24. Instead, KRELLER discloses compiling mobile agents, which are unrelated to software for accessing a network or to peering software.

Therefore, even if KO and KRELLER were to be combined with MULTERER, the combination would not disclose or suggest the above feature of claim 24. Further, even if for the sake of argument, the combination of MULTERER, KO, and KRELLER could be fairly construed to disclose or suggest each of the features of claim 24, Appellants assert that the reasons for combining MULTERER, KO, and KRELLER do not satisfy the requirements of 35 U.S.C. § 103.

For example, with respect to the reasons for combining MULTERER and KO, the Examiner alleges (final Office Action, p. 3):

It would have been obvious to one of ordinary skill in the art to combine the teaching of Ko with Multerer thereby utilizing the optical disk of Ko to load an operating system, such as the one of Multerer 526 and then install game software (Ko; paragraph 44), which can be the gaming software described in Multerer (e.g. abstract), thereby allowing those users of Multerer in order to utilize the gaming software regardless of the type of operating system software or the type of hardware in the device supported by Ko (paragraphs 11-12).

Appellants submit that the Examiner's allegation is merely a conclusory statement about an alleged benefit of the combination. Such conclusory statements have been repeatedly held to be insufficient for establishing a *prima facie* case of obviousness. In this respect, Appellants rely upon KSR International Co. v. Teleflex Inc., 550 U.S. ____ (April 30, 2007) (citing In re Kahn, 441 F.3d 977, 988 (Fed. Cir. 2006)), where it was held that rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.

With respect to the reasons for combining MULTERER and KO with KRELLER, the Examiner alleges (final Office Action, p. 4):

It would have been obvious to one of ordinary skill in the art to combine the teaching of Keller with Multerer-Ko, in order to compile and install the peering software of Multerer utilizing the hardware list of Ko, after the operating system of Ko has been installed, thereby avoiding incompatibilities of software applications and installed hardware.

Appellants submit that the Examiner's allegation is again merely a conclusory statement about an alleged benefit of the combination. Furthermore, if KO is to be combined with MULTERER to avoid operating system and hardware incompatibilities as the Examiner alleges above, it is unclear what the addition of KRELLER is supposed to accomplish. In addition, KRELLER is directed to installing mobile agents, which is unrelated to peer-to-peer applications. As stated above, KRELLER does not even mention peering. The Examiner has not provided a clear explanation of how KRELLER can be combined with an alleged MULTERER and KO combination, or given sufficient reasons for undertaking such a combination. Therefore, a *prima facie* case of obviousness with respect to claim 24 has not been established.

In the Advisory Action, dated August 21, 2008, the Examiner alleges that MULTERER discloses establishing a peering session and that this inherently requires the use and installation of peering software. However, the Examiner admits that MULTERER (and KO) do not disclose

or suggest installing peering software using a configuration file (final Office Action, p. 3). Thus, the Examiner's allegation in the Advisory Action contradicts the Examiner's admission in the final Office Action.

For at least the foregoing reasons, Appellants submit that claim 24 is patentable over MULTERER, KO, and KRELLER, whether taken alone or in any reasonable combination. Accordingly, Appellants respectfully request that the rejection of claim 24 under 35 U.S.C. § 103(a) based on MULTERER, KO, and KRELLER be reversed.

Claims 25, 26, and 29-30 depend from claim 24. Therefore, these claims are patentable over MULTERER, KO, and KRELLER, whether taken alone or in any reasonable combination, for at least the reasons set forth above with respect to claim 24. Accordingly, Appellants respectfully request that the rejection of claims 25, 26, and 29-30 under 35 U.S.C. § 103(a) based on MULTERER, KO, and KRELLER be reversed.

6. Claim 27.

Claim 27 depends from claim 24. Therefore, this claim is patentable over MULTERER, KO, and KRELLER, whether taken alone or in any reasonable combination, for at least the reasons set forth above with respect to claim 24. Accordingly, Appellants respectfully request that the rejection of claim 27 under 35 U.S.C. § 103(a) based on MULTERER, KO, and KRELLER be reversed.

Moreover, this claim is patentable over MULTERER, KO, and KRELLER for reasons of their own.

Claim 27 recites a device to provide at least one advertisement to a first network device of the plurality of network devices based on stored information, which includes information identifying selected games and information identifying the users associated with a plurality of

network devices. The Examiner alleges that this feature is well known in the art and relies on OFFICIAL NOTICE (final Office Action, p. 9). Appellants respectfully disagree with the Examiner's allegation.

Appellants are not aware of any references that disclosed, at the time of the invention, a device to provide at least one advertisement to a first network device of the plurality of network devices based on stored information, which includes information identifying selected games and information identifying the users associated with a plurality of network devices. In the Request for Reconsideration, filed August 8, 2008, Appellants have requested that the Examiner provide a reference disclosing this feature. The Examiner alleges that Appellants have failed to seasonably challenge the Examiner's assertions of well known subject matter and thus allegedly the claim features the Examiner considers well known are now established as admitted prior art (final Office Action, p. 11). Appellants respectfully traverse the Examiner's assertion. M.P.E.P. § 2144.03 does not specify a time limit within which Appellants must seasonably challenge the Examiner's OFFICIAL NOTICE. Furthermore, as stated in the footnote on p. 12 of the Amendment, dated April 17, 2008, Appellants' silence as to the Examiner's assertion as to dependent claims is not a concession that such assertions are accurate.

Since the Examiner has not provided a reference disclosing the feature recited in claim 27, a *prima facie* case of obviousness with respect to claim 27 has not been established.

For at least this additional reason, Appellants submit that claim 27 is patentable over MULTERER, KO, and KRELLER. Accordingly, Appellants respectfully request that the rejection of claim 27 under 35 U.S.C. § 103(a) based on MULTERER, KO, and KRELLER be reversed.

7. Claim 28.

Claim 28 depends from claim 24. Therefore, this claim is patentable over MULTERER, KO, and KRELLER, whether taken alone or in any reasonable combination, for at least the reasons set forth above with respect to claim 24. Accordingly, Appellants respectfully request that the rejection of claim 28 under 35 U.S.C. § 103(a) based on MULTERER, KO, and KRELLER be reversed.

Moreover, this claim is patentable over MULTERER, KO, and KRELLER for reasons of their own.

Claim 28 recites a device to provide at least one advertisement to a first network device of the plurality of network devices based on stored information, which includes information identifying selected games and information identifying the users associated with a plurality of network devices. The Examiner alleges that this feature is well known in the art and relies on OFFICIAL NOTICE (final Office Action, p. 9). Appellants respectfully disagree with the Examiner's allegation.

Appellants are not aware of any references that disclosed, at the time of the invention, a device to provide at least one fee-based service to a first network device of the plurality of network devices based on stored information, which includes information identifying selected games and information identifying the users associated with a plurality of network devices. In the Request for Reconsideration, filed August 8, 2008, Appellants have requested that the Examiner provide a reference disclosing this feature. The Examiner alleges that Appellants have failed to seasonably challenge the Examiner's assertions of well known subject matter and thus allegedly the claim features the Examiner considers well known are now established as admitted prior art (final Office Action, p. 11). Appellants respectfully traverse the Examiner's assertion. M.P.E.P. § 2144.03 does not specify a time limit within which Appellants must seasonably

challenge the Examiner's OFFICIAL NOTICE. Furthermore, as stated in the footnote on p. 12 of the Amendment, dated April 17, 2008, Appellants' silence as to the Examiner's assertion as to dependent claims is not a concession that such assertions are accurate.

Since the Examiner has not provided a reference disclosing the feature recited in claim 28, a *prima facie* case of obviousness with respect to claim 28 has not been established.

For at least this additional reason, Appellants submit that claim 28 is patentable over MULTERER, KO, and KRELLER. Accordingly, Appellants respectfully request that the rejection of claim 28 under 35 U.S.C. § 103(a) based on MULTERER, KO, and KRELLER be reversed.

8. Claim 31.

Independent claim 31 is directed to a network device that includes means for receiving a gaming package, the gaming package including an operating system, a script for detecting a hardware configuration of the network device, software for accessing a network, peering software, and gaming software; means for installing the operating system based on receiving the gaming package; means for detecting a hardware configuration of the network device using the script; means for compiling the software for accessing the network, the peering software, and the gaming software based on the detected hardware configuration of the network device; means for installing the software for accessing the network, the peering software, and the gaming software based on the detected hardware configuration of the network device; and means for establishing a peer-to-peer gaming session with at least one other network device using the software for accessing the network, the peering software, and the gaming software. MULTERER, KO, and KRELLER, whether taken alone or in any reasonable combination, do not disclose or suggest this combination of features.

For example, MULTERER, KO, and KRELLER do not disclose or suggest means for installing the software for accessing a network, peering software, and gaming software based on detected hardware configuration of a network device, as recited in claim 31. The Examiner states that claim 31 is rejected for the same reasons as claim 1 (final Office Action, p. 10). In rejecting claim 1, the Examiner admits that MULTERER does not disclose “modifying the first network device for the gaming session, the modifying including loading a new operating system” (final Office Action, p. 3). The Examiner relies on paragraphs [0036-0038], [0040], and [0044] of KO for allegedly disclosing installing network access software using a configuration file (final Office Action, p. 3). Appellants disagree with the Examiner’s interpretation of KO.

Paragraphs [0036-0038] of KO disclose, after turning on a computer, checking the system configuration, checking installation states and problems of various peripheral devices connected to the computer and generating a hardware list containing these devices. If there is a problem during this process, an error is indicated to the user. Next, a boot program loading operation is executed. The boot program is stored inside a boot program storage device and is loaded into the RAM. The boot program contains a priority table, an optical disc player driver, and a loader program. The user selects an operating system, and if only one operating system is available, that operation system is automatically selected.

This section of KO does not disclose or suggest means for installing the software for accessing a network, peering software, and gaming software based on detected hardware configuration of a network device, as recited in claim 31. Rather, this section of KO only discloses loading a boot program and letting a user select an operating system.

Paragraph [0040] of KO discloses that after an operating system is loaded, a necessary user configuration is set up using user configuration setting information recorded in the data

region disc. After obtaining configuration variables, such as application programs used by the user and data files generated by the application programs, necessary application programs are executed. The user can obtain the same operating system and user configuration as that of a computer, and the user configuration, which contains information on the application programs used by the user and the data used by the application programs, may be updated in response to the changes.

This section of KO does not disclose or suggest means for installing the software for accessing a network, peering software, and gaming software based on detected hardware configuration of a network device, as recited in claim 31. Rather, this section of KO only discloses setting user configurations for application programs.

Paragraph [0044] of KO discloses the case of applying the optical disc of KO to a game system. The linker loads an appropriate operating system and game programs to the game engine so that various game systems can operate with only one optical disc.

This section of KO does not disclose or suggest means for installing the software for accessing a network, peering software, and gaming software based on detected hardware configuration of a network device, as recited in claim 31. Rather, this section of KO only discloses using the same optical disc having an operation system to multiple game systems.

The Examiner also alleges that KO discloses installing drivers for each device on the user's computer, and that since MULTERER discloses a network access device, one of ordinary skill would naturally understand that a network driver would be installed as well (final Office Action, p. 3). The Examiner appears to be referring to paragraph [0039] of KO, which discloses that if a user selects an operating system recorded on an optical disc, the operating system is read from the optical disc and loaded into the RAM. The hardware list generated previously is used

to install a driver file for each device on the list. This section of KO does not disclose or suggest means for installing the software for accessing a network, peering software, and gaming software based on detected hardware configuration of a network device, as recited in claim 31. Even if it is assumed, for the sake of argument, that the hardware list contains a network device, a point Appellants do not concede, installing a network driver for a network device cannot be reasonably held to correspond to installing software for accessing the network. For example, a device driver is generally hardware specific, while software for accessing the network operates as an application.

Furthermore, none of the sections of KO relied on by the Examiner, or any other sections of KO, disclose or even remotely suggest peering software. Therefore, KO does not disclose or suggest means for installing the software for accessing a network, peering software, and gaming software based on detected hardware configuration of a network device, as recited in claim 31. In fact, the Examiner admits that MULTERER and KO do not disclose or suggest installing peering software using a configuration file (final Office Action, p. 3).

The Examiner alleges that KRELLER discloses “another software installation system in which, in response to receiving a hardware list of components installed, an executable application is compiled and installed on the client device” (final Office Action, p. 3). Appellants submit that this allegation does not address the feature of installing peering software. KRELLER does not disclose or even remotely suggest peering software. In fact, the words “peer” or “peering” do not appear anywhere in KRELLER.

Moreover, MULTERER, KO, and KRELLER do not disclose or suggest means for compiling software for accessing the network, peering software, and gaming software based on detected hardware configuration of a network device, as recited in claim 31. The Examiner

admits that MULTERER and KO do not disclose or suggest compiling network access software and peering software using a configuration file, and, as stated above, relies on col. 3, lines 20-31 of KRELLER for allegedly disclosing “another software installation system in which, in response to receiving a hardware list of components installed, an executable application is compiled and installed on the client device” (final Office Action, p. 3). Appellants submit that this section of KRELLER does not disclose or suggest the above feature of claim 31.

Col. 3, lines 20-31 of KRELLER disclose:

The agent system is distinguished in that the agent system launcher is designed such that, before an agent system is loaded from a host computer onto the client computer on which at least the agent system launcher is installed, an identifier describing the hardware and/or software of the client computer is sent to the host computer, and a server system, the agent system update program, installed on the host computer is designed such that it takes the identifier describing the hardware and/or the software of the client computer as a basis for compiling an agent system adjusted to the hardware and/or software of the client computer and loads this agent system onto the client computer.

This section of KRELLER discloses an agent system that is installed on a host computer by using the hardware and/or software of the client computer, on which the agent system is to be installed, as a basis for compiling the agent system and loading the agent system onto the client computer. The agent system, or mobile agent, is an autonomous cooperative software unit, which requires no interaction with the user, and is fundamentally different from a conventional program (see KRELLER, col. 1, lines 23-26 and lines 38-42). This section of KRELLER does not disclose or suggest means for compiling software for accessing the network, peering software, and gaming software based on detected hardware configuration of a network device, as recited in claim 31. Instead, KRELLER discloses compiling mobile agents, which are unrelated to network access software or to peering software.

Therefore, even if KO and KRELLER were to be combined with MULTERER, the combination would not disclose or suggest the above feature of claim 31. Further, even if for the sake of argument, the combination of MULTERER, KO, and KRELLER could be fairly

construed to disclose or suggest each of the features of claim 31, Appellants assert that the reasons for combining MULTERER, KO, and KRELLER do not satisfy the requirements of 35 U.S.C. § 103.

For example, with respect to the reasons for combining MULTERER and KO, the Examiner alleges (final Office Action, p. 3):

It would have been obvious to one of ordinary skill in the art to combine the teaching of Ko with Multerer thereby utilizing the optical disk of Ko to load an operating system, such as the one of Multerer 526 and then install game software (Ko; paragraph 44), which can be the gaming software described in Multerer (e.g. abstract), thereby allowing those users of Multerer in order to utilize the gaming software regardless of the type of operating system software or the type of hardware in the device supported by Ko (paragraphs 11-12).

Appellants submit that the Examiner's allegation is merely a conclusory statement about an alleged benefit of the combination. Such conclusory statements have been repeatedly held to be insufficient for establishing a *prima facie* case of obviousness. In this respect, Appellants rely upon KSR International Co. v. Teleflex Inc., 550 U.S. ____ (April 30, 2007) (citing In re Kahn, 441 F.3d 977, 988 (Fed. Cir. 2006)), where it was held that rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.

With respect to the reasons for combining MULTERER and KO with KRELLER, the Examiner alleges (final Office Action, p. 4):

It would have been obvious to one of ordinary skill in the art to combine the teaching of Keller with Multerer-Ko, in order to compile and install the peering software of Multerer utilizing the hardware list of Ko, after the operating system of Ko has been installed, thereby avoiding incompatibilities of software applications and installed hardware.

Appellants submit that the Examiner's allegation is again merely a conclusory statement about an alleged benefit of the combination. Furthermore, if KO is to be combined with MULTERER to avoid operating system and hardware incompatibilities as the Examiner alleges above, it is unclear what the addition of KRELLER is supposed to accomplish. In addition, KRELLER is

directed to installing mobile agents, which is unrelated to peer-to-peer applications. As stated above, KRELLER does not even mention peering. The Examiner has not provided a clear explanation of how KRELLER can be combined with an alleged MULTERER and KO combination, or given sufficient reasons for undertaking such a combination. Therefore, a *prima facie* case of obviousness with respect to claim 31 has not been established.

In the Advisory Action, dated August 21, 2008, the Examiner alleges that MULTERER discloses establishing a peering session and that this inherently requires the use and installation of peering software. However, the Examiner admits that MULTERER (and KO) do not disclose or suggest installing peering software using a configuration file (final Office Action, p. 3). Thus, the Examiner's allegation in the Advisory Action contradicts the Examiner's admission in the final Office Action.

For at least the foregoing reasons, Appellants submit that claim 31 is patentable over MULTERER, KO, and KRELLER, whether taken alone or in any reasonable combination. Accordingly, Appellants respectfully request that the rejection of claim 31 under 35 U.S.C. § 103(a) based on MULTERER, KO, and KRELLER be reversed.

CONCLUSION

In view of the foregoing arguments, Appellants respectfully solicit the Honorable Board to reverse the Examiner's rejection of claims 1, 3-16, and 18-31.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 50-1070 and please credit any excess fees to such deposit account.

Respectfully submitted,

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VIII. APPENDIX

1. A method for establishing a gaming session between a first network device that includes an operating system and at least one second network device in a communications network, the method comprising:

modifying the first network device for the gaming session, the modifying

including:

loading a new operating system,

booting the first network device up in the new operating system,

detecting a hardware configuration of the first network device,

generating a configuration file based on the detecting,

compiling network access software and peering software using the

configuration file, and

installing the network access software and the peering software using the

configuration file,

connecting the first network device to the communications network; and

establishing a peer-to-peer gaming session with the at least one second network

device.

2. (Canceled)

3. The method of claim 1 further comprising:

installing gaming software using the configuration file.

4. The method of claim 1 wherein the detecting includes:
determining a video capability and a configuration of one or more of a hard disk drive, monitor, memory, processor, communications interface, or network interface of the first network device.
5. The method of claim 1 further comprising:
connecting, prior to establishing the peer-to-peer gaming session, to a server.
6. The method of claim 5 wherein the server includes an Internet Relay Chat (IRC) server.
7. The method of claim 1 wherein the connecting includes:
connecting to the communications network using Virtual Private Network (VPN) security.
8. The method of claim 1 further comprising:
storing information relating to the peer-to-peer gaming session.
9. The method of claim 1 further comprising:
providing an ability to boot the first network device up in the operating system or the new operating system.
10. The method of claim 1 wherein the modifying includes:

removing the operating system after loading the new operating system.

11. The method of claim 1 wherein the loading a new operating system causes the first network device to be tuned for communications and peer-to-peer gaming.

12. A device comprising:

a memory configured to store instructions; and

a processor configured to execute the instructions to:

receive a gaming package, the gaming package including an operating system, a script for detecting a hardware configuration of the device, software for accessing a network, and peering software,

load the operating system in response to receiving the gaming package,

detect a hardware configuration of the device using the script,

compile the software for accessing the network and the peering software based on the detected hardware configuration of the device,

install the software for accessing the network and the peering software based on the detected hardware configuration of the device, and

establish a peer-to-peer gaming session with another device over the network using the software for accessing the network and the peering software.

13. The device of claim 12 wherein the operating system includes an open-source operating system.

14. The device of claim 12 wherein the gaming package further includes:
gaming software.
15. The device of claim 12 wherein the processor receives the gaming package from
one of a compact disk or a digital video disc.
16. The device of claim 12 wherein, when receiving the gaming package, the
processor is configured to:
download the gaming package from the network.
17. (Canceled)
18. The device of claim 12 wherein, when detecting the hardware configuration, the
processor is configured to:
determining a video capability and a configuration of one or more of a hard disk
drive, monitor, memory, processor, communications interface, or network interface of the
device.
19. The device of claim 12 wherein the processor is further configured to:
store information relating to the peer-to-peer gaming session.
20. The device of claim 19 wherein the information relating to the peer-to-peer
gaming session includes information identifying a game being played in the peer-to-peer gaming

session.

21. The device of claim 12 wherein, when establishing the peer-to-peer gaming session, the processor is configured to:

establish a connection to the network, and

establish a connection to a server, the server being configured to identify possible gaming sessions.

22. The device of claim 21 wherein the processor establishes the peer-to-peer gaming session in response to a selection of one of the identified possible gaming sessions.

23. The device of claim 21 wherein the processor is configured to establish the connection to the network using Virtual Private Network security.

24. A network comprising:

a server configured to:

provide a list of games; and

a plurality of network devices, at least one network device of the plurality of network devices being configured to:

receive a gaming package that includes an operating system, a script for detecting a hardware configuration of the device, software for accessing a network, and peering software,

load the operating system in response to receiving the gaming package,

detect a hardware configuration of the device using the script,
compile the software for accessing the network and the peering software
based on the detected hardware configuration of the device,
install the software for accessing the network and the peering software
based on the detected hardware configuration of the device,
obtain the list of games from the server using the software for accessing
the network,
select one game in the list of games, and
establish, using the peering software, a peer-to-peer gaming session with
at least one other network device of the plurality of network devices in response to selecting the
one game.

25. The network of claim 24 wherein the server is further configured to:
store information relating to the established peer-to-peer gaming sessions.
26. The network of claim 25 wherein the stored information includes:
information identifying the selected games,
information identifying the users associated with the plurality of network devices.
27. The network of claim 26 further comprising:
a device to:
provide at least one advertisement to a first network device of the plurality
of network devices based on the stored information.

28. The network of claim 26 further comprising:
a device to:

provide at least one fee-based service to a first network device of the plurality of network devices based on the stored information.

29. The network of claim 25 wherein the server includes a plurality of geographically distributed servers.

30. The server of claim 29 further comprising:

a warehouse configured to store the information relating to the established peer-to-peer gaming sessions from each of the plurality of geographically distributed servers.

31. A network device comprising:

means for receiving a gaming package, the gaming package including an operating system, a script for detecting a hardware configuration of the network device, software for accessing a network, peering software, and gaming software;

means for installing the operating system based on receiving the gaming package;

means for detecting a hardware configuration of the network device using the script;

means for compiling the software for accessing the network, the peering software, and the gaming software based on the detected hardware configuration of the network device;

means for installing the software for accessing the network, the peering software,

and the gaming software based on the detected hardware configuration of the network device;
and

means for establishing a peer-to-peer gaming session with at least one other network device using the software for accessing the network, the peering software, and the gaming software.

IX. EVIDENCE APPENDIX

None

X. RELATED PROCEEDINGS APPENDIX

None